No. 182.

Office Supreme Court U. S.
FILED
MAR 6 1899
JAMES H. McKENNEY,
Clerk.

In the Supreme Court

Motion by D. C. to dismiss.

OF THE

United States,

Filed March 6, 1899.

OCTOBER TERM, 1898.

RICHARD F. CAFFREY, County Clerk,
Oklahoma County,
Oklahoma Territory,
Plaintiff-in-Error and Appellant,

vs.

No. ~~—~~ 182

TERRITORY OF OKLAHOMA, ex rel.
Harper S. Cunningham,
Attorney General,
Defendant-in-Error and Appellee.

MOTION TO DISMISS.

HARPER S. CUNNINGHAM,
Attorney General.

In the Supreme Court

OF THE

United States,

OCTOBER TERM, 1898.

RICHARD F. CAFFREY, County Clerk,
Oklahoma County,
Oklahoma Territory,
Plaintiff-in-Error and Appellant,

vs.

No. 661

TERRITORY OF OKLAHOMA, ex rel.
Harper S. Cunningham,
Attorney General,
Defendant-in-Error and Appellee.

MOTION TO DISMISS.

Comes now the appellee, by its counsel appearing in that behalf, and moves the court to dismiss the appeal in the above entitled cause for want of jurisdic-

tion because the judgment or decree from which said appeal purports to have been taken is the judgment or decree of the Supreme Court of the Territory of Oklahoma and it is apparent from an inspection of said record that no federal question is involved in said cause:

For that the sum of five thousand dollars is not involved in said cause as is shown by the affidavit of the Territorial Auditor hereto attached, marked "Exhibit A" and made a part of this motion.

And the said appellee, by counsel as aforesaid, also moves the court to affirm the said judgment or decree rom which said appeal purports to have been taken, because, although the record in the said cause may show that this court has jurisdiction in the premises, yet it is manifest that said appeal was taken for delay only and for the purpose of evading the penalty adjudged against the appellant as for contempt of court for failure to comply with the peremptory writ of mandamus issued in this case.

HARPER S. CUNNINGHAM,
Attorney General of Oklahoma.

EXHIBIT A.

Territory of Oklahoma, } ss
County of Logan, }

S. N. Hopkins of lawful age being duly sworn on his oath says:

That he is the duly appointed, qualified and acting Auditor of the Territory of Oklahoma and as such officer has charge of the books, records and papers pertaining to the Territorial Board of Equalization of Taxes; that he has examined said records for the purpose of making this affidavit; that exclusive of the valuation of Railroad property which is three hundred thirty-six thousand, six hundred and ninety-three ($336,693.00) dollars, and which is not affected in any way by the action of the Territorial Board of Equalization as hereafter mentioned and which does not increase the amount of taxes affected by the action of said Board, the total valuation of the property of Oklahoma county in the Territory of Oklahoma as returned by the County Clerk to the Territorial Board of Equalization was three million, eighty thousand, six hundred and ninety-five dollars ($3,080,695); that the amount of the valuation of the County of Oklahoma as equalized by the Territorial Board of Equalization was fixed at three million, eight hundred twenty thousand and sixty-one ($3,820,061.00) dollars; that the amount of the raise added by said Board to the returns of the assessors was seven hundred thirty-nine thousand, three hundred and sixty-six ($739,366.00) dollars; that the amount of Territorial Taxes levied for the year 1898 by law and by the Territorial Board of Equalization as required by law was four and three-tenths mills on the dollar of valuation; that the local taxes in the County of Oklahoma were required by law to be levied

upon the basis of valuation certified to the County Clerk by the Territorial Board of Equalization, and in such amount as had been estimated by the Board of County Commissioners of said county at their July, 1898, meeting, as required by law, the amount of said local taxes not beng in any manner whatever affected by the Territorial Board of Equalization in equalizing as above set forth—except as to the rate of per cent which would be required to raise the amount so estimated by said Board as being sufficient and necessary for the county and local expenses during said year; that the affect of the raise in valuation in such equalization by said Territorial Board was simply to increase the taxes of the citizens of Oklahoma county by four and three-tenths mills per eent upon the amount of the increase so added to the valuation returned by the assessors to the Territorial Board of Equalization; that four and three-tenths mills per cent upon the said amount, to-wit, seven hundred thirty-nine thousand, three hundred and sixty-six ($739,366.00) dollars would produce the sum of three thousand one hundred seventy-nine dollars and twenty-seven cents ($3,179.27). Further affiant saith not.

S. N. HOPKINS,
Auditor.

Sworn to and subscribed before me this 4 day of January, A. D.

[SEAL] ALBIN A. STEVENS,
Notary Public.

My comission expires April 12, 1901.

Due personal service of the above objections and motions is hereby acknowledged this 7 day of January, A. D., 1899.

JAMES R. KEATON,
Attorney for Plaintiff in Error and Appellant.

To Mr. J. R. Keaton, counsel for appellant:

Please take notice that on Monday the 30th day o' January, A. D., 1899, at the opening of the court, or as soon the eafter as counsel can be heard, the motions of which the foregoing are copies will be submitted to the Supreme Court of the United States for decision of the said court thereon.

Annexed hereto is a copy of the brief of argument to be submitted with said motions in support thereof

HARPER S. CUNNINGHAM,
Attorney General of Oklahoma.

I hereby accept service of the foregoing notice this 7th day of January, 1899.

J. R. KEATON,
Attorney for Caffrey.